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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,  
Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,  
Defendant.

No. P1300CR20081339

Div. 6

**DEFENDANT'S MOTION FOR  
REEXAMINATION OF  
CONDITIONS OF RELEASE**

(Expedited Oral Argument  
Requested)

Defendant Steven C. DeMocker, by and through counsel, hereby requests that this court reexamine his conditions of release, pursuant to Ariz. R. Crim. Pro. 7.4(b) and A.R.S. § 13-3967(G). Mr. DeMocker also requests that the Court provide notice to any person having declared victim status in the case in advance of any order amending conditions pursuant to A.R.S. §§ 13-3967(G) and 13-4406.

**BACKGROUND**

1           On December 23 and 24, 2008 and January 13 and 15, 2009, the Court took  
2 evidence and heard argument to determine if the State had met its burden with respect to  
3 “proof evident” or “presumption great” existing that Mr. DeMocker committed the  
4 offenses for which he is charged. On January 22, 2009, the Court found that the State  
5 had not met its burden and that therefore Mr. DeMocker is entitled to bail under A.R.S.  
6 § 13-3962. On that same date, this Court set bond at \$2,500,000, to be posted in cash or  
7 by a secured appearance bond through a bail bondsman. Mr. DeMocker, by and  
8 through counsel, filed a motion to reconsider his conditions of release on January 29,  
9 2009. The Court denied the motion on April 30, 2009. On August 26, 2009 Mr.  
10 DeMocker filed a motion to reexamine conditions of release. The Court heard argument  
11 on September 22, 2009. A supplemental motion was filed on October 6, 2009. The  
12 focus of this motion was Mr. DeMocker’s inability to assist in his defense given his  
13 conditions of confinement. The State promised to make a number of modifications to  
14 Mr. DeMocker’s conditions of confinement to insure that Mr. DeMocker could assist in  
15 his own defense. The Yavapai County Sheriff first indicated an intent to comply, then  
16 refused, and ultimately agreed to a number of changes. On November 19, 2009, the  
17 Court heard from Katie and Charlotte DeMocker, two victims in the case, who strongly  
18 supported Mr. DeMocker’s release. On November 20, the Court heard additional  
19 argument. The motion was denied in a November 21, 2009 order. On December 22,  
20 2009 Mr. DeMocker filed a motion to reconsider his conditions of release based on the  
21 State’s failure to make the promised changes to Mr. DeMocker’s conditions of  
22 confinement. A hearing was held on January 22 and January 29. On February 23, the  
23 Court again denied the defense motion.

24           On May 26, 2010, after several weeks of jury selection involving death  
25 qualification of the jury, the State dismissed the death penalty. On May 28, the Court  
26 modified Mr. DeMocker’s release conditions by reducing the bond amount to \$1 million  
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1 and ordering GPS monitoring. The \$1 million amount of bond came not from a  
2 consideration of Mr. DeMocker's financial means and consideration under the relevant  
3 statute but rather from the State asking Ruth Kennedy, Carol Kennedy's mother, during  
4 the hearing what bond amount she would support and providing that amount to the  
5 Court (\$1 million). That is the amount the Court imposed.

6 Since the time bond was reduced \$1 million, Judge Lindberg fell ill and the State  
7 has greatly expanded its estimated trial time. Trial is now expected to last through the  
8 end of October 2010. Mr. DeMocker has been incarcerated since October of 2008. The  
9 original trial estimate was for trial to conclude in July or August. Throughout the trial,  
10 Mr. DeMocker has been either completely denied or provided with only limited  
11 visitation. When he is transported to Court, which will now be four days a week every  
12 week, he is operating on four hours of sleep. This has affected both his ability to assist  
13 in his own defense and be attentive during this most important time.

14 On application, Mr. DeMocker is entitled to have the conditions of release  
15 reviewed by the judicial officer that imposed them and the Court may amend the order  
16 to employ different or additional conditions of release, including a reduction in bail.  
17 A.R.S. § 13-3967(G). Mr. DeMocker also requests that the Court notify any person  
18 who has declared victim status as is required under A.R.S. §§ 13-3967(G) and 13-4406.  
19 Material facts not previously presented to the Court regarding the length of the trial, the  
20 strength of the case against Mr. DeMocker, and dismissal of the death penalty are  
21 available and discussed herein. Ariz. R. Crim. P. 7.4(b). Mr. DeMocker hereby  
22 requests that this Court reduce his bond amount and continue the additional conditions  
23 of release to include electronic monitoring to be paid by Mr. DeMocker.

## 24 ARGUMENT

### 25 I. The Purpose of Bail is to Secure Mr. DeMocker's Appearance.

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1 Pursuant to A.R.S. § 13-3961(B), the purposes of bail and conditions of release  
2 are to assure the appearance of the accused, protect against the intimidation of  
3 witnesses, and protect the safety of the victim, any other person, or the community. *See*  
4 A.R.S. § 13-3961(B) 1-3. In this case, there are no issues with respect to the  
5 intimidation of witnesses or protection of anyone or the community. Therefore, the  
6 proper purpose of bail and conditions of release are to assure the appearance of Mr.  
7 DeMocker. As the Arizona Supreme Court has held:

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9 Bail is exacted for the sole purpose of securing the attendance of the  
10 defendant in court at all times when his presence may be lawfully  
11 required, and his surrendering himself in execution of any legal judgment  
12 that may be pronounced against him, and any bail fixed at more than is  
13 necessary to secure that appearance is excessive within the meaning of the  
14 constitution.

15 *Gusick v. Boies*, 71 Ariz. 233, 236, 233 P.2d 446, 448 (1951) (internal  
16 citations omitted). Excessive bail is likewise “not to be required for the purpose  
17 of preventing the prisoner from being admitted to bail.” *Id.* (citations omitted).

## 18 **II. This Court Should Lower the Bond Amount.**

19 A.R.S. § 13-3967 (B)<sup>1</sup> outlines the appropriate considerations for the Court to  
20 use in determining the method of release or the amount of bond. These considerations  
21 include the following: the views of the victim; the nature and circumstances of the  
22 offense; the weight of the evidence against the accused; the accused’s family ties,  
23 employment, financial resources, character and mental condition; the results of any drug  
24 test; whether the accused is using any illegal substances; whether the accused violated  
25 certain drug offense; the length of residence in the community; the accused’s record of

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27 <sup>1</sup> Because a *Simpson* determination has been made that Mr. DeMocker is entitled to bail, A.R.S. § 13-3967  
28 applies.

1 arrests and convictions; and the accused's record of appearance at court proceedings or  
2 of flight to avoid prosecution or failure to appear.

3       These factors weigh heavily in favor of substantially reducing Mr. DeMocker's  
4 bond amount from \$1,000,000. The Court has found that the weight of the evidence  
5 against Mr. DeMocker does not rise to the level of proof evident or presumption great.  
6 The Court also found that no motive for the crime is apparent even after hearing four  
7 days of testimony in a *Simpson* hearing and after a thorough review of the grand jury  
8 transcript. The State has now dismissed the death penalty. The State has also  
9 acknowledged that there is unknown male DNA under the victim's fingernails and that  
10 Mr. DeMocker is excluded from this as well as from all biological evidence found at the  
11 scene. The State also admits that no blood or biological material from the victim was  
12 found on Mr. DeMocker, his car, his home, his office or any other location associated  
13 with him. The State has no eye-witnesses to the crime, no murder weapon and no direct  
14 evidence that Mr. DeMocker committed this crime. Mr. DeMocker has always  
15 maintained his innocence.

16       Mr. DeMocker has lived in Prescott for over 20 years. His minor daughters,  
17 Charlotte and Katie DeMocker, both live in Prescott and have testified that they  
18 desperately want Mr. DeMocker home with them. He has significant family ties, and  
19 his family has shown a strong presence and support for Mr. DeMocker throughout these  
20 proceedings. Mr. DeMocker was professionally employed by UBS as a financial  
21 advisor. There are no allegations or suggestions involving illegal substance abuse nor  
22 are any drug offenses charged. Mr. DeMocker has never been arrested before and has  
23 no prior convictions. All of these factors strongly favor a reduced bond amount.

24       Mr. DeMocker has been incarcerated since October of 2008 and based on new  
25 trial estimates will be incarcerated for two years pretrial if he is not now released. His  
26 conditions of confinement have severely restricted, and for several months eliminated  
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1 entirely, visitation with his daughters and family. He is required to operate on very little  
2 sleep when transported from the Verde Valley Jail to Prescott for trial days, which will  
3 now take place four days a week, every week. This has affected his concentration and  
4 ability to assist in his defense.

5 The critical determination for this Court is securing Mr. DeMocker's appearance.  
6 At the *Simpson* hearing on this matter the Court heard evidence that Mr. DeMocker was  
7 the sole suspect from the time of the victim's death in July, 2008 until his arrest almost  
8 four months later in October. As the Court found in its *Simpson* order, there was  
9 evidence that indicated some planning efforts by Mr. DeMocker to flee. However, as  
10 the Court noted, this planning was arguably consistent with Mr. DeMocker's innocence.  
11 Perhaps more importantly for the Court's determination of bond, Mr. DeMocker did not  
12 flee. Even though he believed he was the sole suspect for almost four months and even  
13 though the Yavapai County Sheriff's Office announced in early October to the press  
14 that an arrest was imminent, Mr. DeMocker was arrested while sitting at his desk at  
15 work. His past behavior in not fleeing is reflective of what the Court can expect of his  
16 future behavior. Mr. DeMocker and his family are committed to fighting these charges.

17 In terms of financial resources, Mr. DeMocker has also been unable to earn an  
18 income while incarcerated since October of 2008. Mr. DeMocker and his family are  
19 paying substantial monies in legal fees and expenses for his defense as well as  
20 financially supporting his two minor children. Mr. DeMocker and his family are  
21 without the financial resources to afford the \$1 million bond set by the Court, and ask  
22 the Court to consider a lower amount. The family believes it could post a bond of no  
23 more than \$350,000.

24 All of these considerations - the weight of the evidence; Mr. DeMocker's family  
25 ties, his employment, financial resources, character and mental condition; the absence of  
26 any illegal drug issues; the length of Mr. DeMocker's residence in the community; his  
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1 lack of any prior arrests or convictions; and his staying put during four months of  
2 intensive investigation and prejudicial publicity in the face of an impending arrest, and  
3 the delay of the conclusion of the trial in this case – support a reduction in the amount of  
4 bond. If the Court were to lower the bond amount to an amount Mr. DeMocker and his  
5 family can reasonably afford and place Mr. DeMocker on electronic monitoring, the  
6 purposes of bond would be met and the Court will be assured of Mr. DeMocker's  
7 appearance.  
8

9 **III. The Court May Order Electronic Monitoring as a Condition of**  
10 **Release to Assure Mr. DeMocker's Future Appearance.**

11 Pursuant to A.R.S. § 13-3967(D), the Court may, after giving notice to the  
12 victim, impose any other conditions deemed reasonably necessary to assure appearance  
13 as required ...” A.R.S. § 13-3967(D). Mr. DeMocker and his family have carefully  
14 investigated the availability of GPS monitoring and have located a local provider,  
15 Arizona Detention Services. This information was presented to Judge Lindberg and he  
16 ordered GPS monitoring. Arizona Detention Services offers GPS tracking through a  
17 program called E-Cell, Inc. E-Cell, Inc. immediately notifies the Court or the Court's  
18 designee in the event that Mr. DeMocker violates any geographical restrictions set as  
19 conditions of his release. Mr. DeMocker and his family agree to pay all the costs of  
20 GPS monitoring ordered by this Court. This will also save the County the costs of  
21 incarcerating Mr. DeMocker. GPS monitoring will help reassure the Court of Mr.  
22 DeMocker's future appearance, consistent with his previous behavior in this case.  
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24 **CONCLUSION**

25 For these reasons Mr. DeMocker respectfully requests that the Court order the  
26 following:  
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- 1 1. Revoking the previously ordered \$1,000,000 cash or secured appearance  
2 bond through a bail bondsman;  
3 2. Setting bond at a reasonable, reduced amount, to be posted with cash or a  
4 secured appearance bond through a bail bondsman; and  
5 3. GPS electronic monitoring by ankle bracelet shall commence upon Mr.  
6 DeMocker's release, with all costs to be paid by Mr. DeMocker.  
7

8 DATED this 8<sup>th</sup> day of July, 2010.  
9

10 By: 

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19 Attorneys for Defendant

20 **ORIGINAL** of the foregoing hand delivered for  
21 filing this 8<sup>th</sup> day of July, 2010, with:

22 Jeanne Hicks  
23 Clerk of the Court  
24 Yavapai County Superior Court  
25 120 S. Cortez  
26 Prescott, AZ 86303

27 **COPIES** of the foregoing hand delivered this  
28 this 8<sup>th</sup> day of July, 2010, to:

The Hon. Warren R. Darrow  
Judge Pro Tem B  
120 S. Cortez  
Prescott, AZ 86303



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